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The Limits of Business Judgment Rule Protection for State-Owned Enterprise Directors: Analysis of Pertamina's LNG Procurement Case

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Original Article

Abstract

The protection afforded to directors of state-owned enterprises (SOEs) under the Business Judgment Rule (BJR) remains subject to legal uncertainty arising from the tension between corporate law principles and the anti-corruption legal framework, particularly when corporate losses are characterized as state financial losses. This study examines the application of the BJR in Jakarta High Court Judgment No. 41/Pid.Sus-TPK/2024/PT DKI, compares its reasoning with that of Supreme Court Judgment No. 121 K/Pid.Sus/2020, and develops legal parameters for identifying governance violations that may warrant the denial of BJR protection. Employing a normative legal research methodology, this study adopts statutory, conceptual, case, and comparative approaches. Procedural violations do not automatically invalidate BJR protection; rather, their legal significance must be assessed in light of their materiality. This study proposes three cumulative parameters for assessing BJR protection: (1) the existence of proper authority and approval from the relevant corporate organs; (2) the adequacy of available information and the exercise of due care; and (3) the implementation of appropriate risk-mitigation and corrective measures. This study concludes that the denial of BJR protection does not, in itself, establish criminal liability. The constituent elements of the alleged criminal offense must therefore be independently proven in accordance with applicable criminal law standards.

Keywords: *Business Judgment Rule, State-Owned Enterprise Directors, Corporate Governance, Criminal Liability*

Abstrak

Perlindungan Business Judgment Rule (BJR) bagi Direksi Badan Usaha Milik Negara (BUMN) masih menghadapi ketidakpastian hukum akibat ketimpangan antara prinsip hukum perseroan dan rezim pemberantasan tindak pidana korupsi, khususnya ketika kerugian perusahaan dikategorikan sebagai kerugian keuangan negara. Penelitian ini bertujuan menganalisis penerapan BJR dalam Putusan Pengadilan Tinggi DKI Jakarta Nomor 41/Pid.Sus-TPK/2024/PT DKI dengan membandingkannya terhadap Putusan Mahkamah Agung Nomor 121 K/Pid.Sus/2020 serta merumuskan parameter hukum pelanggaran tata kelola yang dapat menggugurkan perlindungan BJR. Penelitian menggunakan metode hukum normatif dengan pendekatan perundang-undangan, konseptual, kasus, dan perbandingan. Pelanggaran prosedur tidak otomatis menghilangkan perlindungan BJR, tetapi harus dinilai berdasarkan materialitasnya. Penelitian mengusulkan tiga parameter kumulatif, yaitu kewenangan dan persetujuan organ perusahaan, kecukupan informasi dan kehati-hatian, serta mitigasi dan tindakan korektif. Disimpulkan bahwa hilangnya perlindungan BJR tidak otomatis membuktikan tindak pidana, sehingga pembuktian unsur pidana harus dilakukan secara independen.

Kata kunci: *Business Judgment Rule, Direksi BUMN, Tata Kelola Perusahaan, Pertanggungjawaban Pidana*

1. INTRODUCTION

State-owned enterprises (SOEs) established as Persero (limited liability companies) serve as instruments through which the state manages sectors of production that are vital to the nation and directly affect the livelihoods of the public, as mandated by Article 33 of the 1945 Constitution of the Republic of Indonesia. Although their capital originates from state assets that have been separated from the state budget, these enterprises are fundamentally corporate legal entities organized as limited liability companies and conduct their business activities in accordance with corporate law principles. This distinctive legal character places Persero SOEs in a unique position, requiring them to reconcile profit-oriented business objectives with their broader responsibilities to advance national economic interests and public welfare. SOE management is expected not only to achieve optimal business performance but also to uphold public accountability and the principles of good corporate governance.

The Board of Directors is vested with the authority to manage the company in the interests of the company and in pursuit of its corporate objectives. This managerial authority entails corresponding fiduciary duties, particularly the duties of good faith, care, and loyalty. Under Articles 92 and 97 of Law No. 40 of 2007 concerning Limited Liability Companies, the Board of Directors must manage the company in accordance with its purposes and objectives and may be held personally liable for losses arising from its own fault or negligence. Nevertheless, business decisions, including investments, acquisitions, and long-term contractual arrangements, inherently involve uncertainty and commercial risks. The occurrence of a financial loss does not, by itself, establish managerial misconduct, as even decisions made rationally and on the basis of adequate information may ultimately produce unfavorable economic outcomes.[1]

To prevent directors' liability from being determined solely by the outcomes of business decisions, corporate law recognizes the doctrine of the Business Judgment Rule (BJR). In Indonesia, this doctrine finds its statutory basis in Article 97(5) of Law No. 40 of 2007 concerning Limited Liability Companies, which establishes an exception to the personal liability of directors, provided that they can demonstrate compliance with four cumulative statutory requirements. This protection shifts the focus of legal assessment away from the mere financial consequences of a business decision toward the decision-making process, including its rationality, procedural integrity, and the diligence exercised by the directors. Accordingly, the BJR does not confer blanket immunity from liability for corporate losses; rather, it provides conditional legal protection to directors who exercise their managerial authority responsibly and in accordance with applicable corporate governance standards.

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[1] Martin Höppner, "Models in Decision-Making Under Risk and Uncertainty," *Journal of Economic Surveys* 40, no. 1 (2026): 304–20, https://doi.org/10.1111/joes.70008.

The application of this doctrine to state-owned enterprises (BUMN) organized as Persero is particularly complex because these entities operate at the intersection of corporate law, state financial law, and the legal framework governing the eradication of corruption. Divergent interpretations of the legal status of state assets that have been separated as corporate capital have generated tensions between corporate liability under company law and criminal liability under public law. Corporate losses may be characterized as state financial losses without sufficiently distinguishing between ordinary business risks, managerial negligence, and conduct constituting a criminal offense. The central legal question, therefore, is not simply whether losses incurred by an SOE may be classified as state financial losses, but also how the directors' decision-making processes and compliance with corporate governance standards should be assessed when determining their legal liability.

These tensions have become increasingly significant following the strengthening of BJR provisions within the regulatory framework governing SOEs. The existence of an explicit normative foundation, however, has not necessarily produced consistent standards of judicial application. This problem is illustrated by the divergent legal outcomes in cases involving the acquisition of a participating interest in the BMG Block and Pertamina's LNG procurement. Both cases highlight the importance of examining the scope of the Board of Directors' authority, the approvals granted by the relevant corporate organs, the adequacy of the underlying business analysis, and the effectiveness of risk-management and mitigation mechanisms. Accordingly, clear legal parameters are needed to distinguish deviations from corporate governance procedures that constitute merely administrative or managerial irregularities from those sufficiently material to undermine BJR protection and become relevant to the determination of criminal liability.

Research on the Business Judgment Rule (BJR) in the context of the liability of directors of state-owned enterprises (SOEs) has developed along several major lines of inquiry, including the legal protection afforded to business decisions, the legal status of separated state assets, the relationship between business risks and criminal corruption, and the consistent application of corporate governance principles. Hartono et al. provide an important contribution to this discussion by identifying regulatory dualism concerning the treatment of financial losses incurred by SOEs organized as limited liability companies (Persero). Their study highlights the tension between Articles 2 and 3 of the Law on the Eradication of Corruption and Article 97(5) of the Law on Limited Liability Companies. This tension arises because losses incurred by SOEs may be characterized as state financial losses, whereas corporate law provides protection to directors who can demonstrate that such losses did not result from their own fault or

negligence.[2] Although this study makes a significant contribution by identifying the underlying normative conflict, it does not establish specific legal parameters for determining the consequences of corporate governance violations for the availability of BJR protection.

A more case-specific perspective is provided by Tetuko and Adam, who examine Supreme Court Decision No. 121 K/Pid.Sus/2020 concerning the acquisition of a participating interest in Australia's BMG Block. They conclude that the directors' actions satisfied the requirements for BJR protection because the investment decision was intended to advance the company's business interests and was made within the scope of their corporate authority. Their analysis emphasizes the importance of evaluating both the substance and the process of business decision-making rather than focusing exclusively on the resulting financial losses.[3] Nevertheless, the study is limited to a single judicial decision and does not offer a systematic comparison with other cases that have produced different legal outcomes.

Fitriani broadens the discussion by comparing the application of the BJR across three jurisdictions: Indonesia, the United States, and Australia. The study emphasizes that legal protection for directors must be assessed in relation to the duties of care and loyalty, the requirement of good faith, and the availability of safe harbor mechanisms.[4] Meanwhile, Pane et al. identify inconsistencies in the application of the BJR arising from the overlap between corporate law and state financial law. They argue that business losses should not automatically give rise to criminal liability unless legally relevant misconduct has been established.[5] Similarly, Harefa and Siswanto maintain that mens rea, state financial losses, and the element of unlawfulness must be examined as distinct legal components when determining the criminal liability of SOE directors.[6]

Wijayanto and Andini investigate the failure of BJR protection in the context of Pertamina's LNG procurement. Their analysis associates the absence of good faith, breaches of the duty of care, and deficiencies in decision-making procedures with the inapplicability of BJR protection.[7] Subsequent studies further emphasize the need for

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2 Rizky Novian Hartono et al., "Kerugian Keuangan Negara Pada Badan Usaha Milik Negara (BUMN) Dalam Perspektif Doktrin Business Judgement Rule," *Keluwih: Jurnal Sosial Dan Humaniora* 2, no. 1 (2021): 23–33, https://doi.org/10.24123/soshum.v2i1.4392.

3 Widyantoro Haryo Tetuko and Richard Candra Adam, "Penerapan Doktrin Business Judgment Rule Terhadap Direksi Anak Perusahaan BUMN: Studi Kasus Putusan Mahkamah Agung Nomor 121 K/Pid.Sus/2020," *Jurnal Hukum Adigama* 5, no. 2 (2022): 777–80.

4 Dhaifina Fitriani, "Perlindungan Direksi Melalui Business Judgment Rule: Studi Analisis Kasus Karen Agustiawan Mantan Dirut Pertamina," *Muamalat: Jurnal Hukum & Ekonomi Syariah* 5, no. 2 (2020): 70–87.

5 Viora Pane et al., "Penerapan Business Judgment Rule Dalam Pertanggungjawaban Direksi BUMN Atas Risiko Bisnis Dan Kerugian Keuangan Negara," *Private Law* 6, no. 2 (2026): 540–58, https://doi.org/10.29303/h49ca038.

6 Beniharmoni Harefa and Siswanto Siswanto, "Konstruksi Hukum Unsur Mens Rea Dan Kerugian Keuangan Negara Dalam Tindak Pidana Korupsi Pada Badan Usaha Milik Negara (BUMN)," *Dialogia Iuridica* 18, no. 1 (2026): 1–27, https://doi.org/10.28932/di.v18i1.13869.

7 Budi Tri Wijayanto and Siska Dwi Andini, "Menguji Batas Business Judgement Rule: Studi Kasus Pengembangan Bisnis Lng PT Pertamina Di Amerika Serikat," *Jurnal Syntax Admiration* 5, no. 12 (2024): 5256–66, https://doi.org/10.46799/jsa.v5i12.1867.

more consistent standards governing the application of the BJR.[8] Notably, Gilbert et al. propose an innovative approach that conceptualizes the BJR as a preliminary assessment or filtering mechanism for distinguishing legitimate business risks and commercial failures from managerial misconduct and criminal offenses.[9]

Despite these contributions, existing scholarship has primarily examined BJR protection, normative conflicts between corporate and state financial law, and the criminal liability of SOE directors as related but largely separate issues. A significant research gap remains concerning the development of specific legal parameters for determining when violations of corporate governance procedures may undermine or preclude BJR protection. Such violations may involve noncompliance with the Corporate Work Plan and Budget (Rencana Kerja dan Anggaran Perusahaan or RKAP), the failure to obtain or appropriately consider the Board of Commissioners' recommendations, the absence of required General Meeting of Shareholders (GMS) approvals, and deficiencies in business and risk assessments. The originality of this study lies in its comparative examination of the BMG Block acquisition and Pertamina's LNG procurement cases, coupled with the development of legal parameters for distinguishing corporate governance irregularities from conduct that may constitute criminal corruption. By integrating corporate law principles with the criminal law framework, this study seeks to clarify the circumstances under which governance violations may affect the availability of BJR protection without automatically establishing criminal liability.

This study pursues two principal objectives. First, it examines the legal status and application of the Business Judgment Rule (BJR) in the judicial reasoning underlying Jakarta High Court Decision No. 41/Pid.Sus-TPK/2024/PT DKI, through a comparison with Supreme Court Decision No. 121 K/Pid.Sus/2020 concerning the acquisition of a participating interest in the BMG Block. Second, it analyzes whether violations of corporate governance procedures, particularly those relating to the Corporate Work Plan and Budget (RKAP), the Board of Commissioners' recommendations, General Meeting of Shareholders (GMS) approvals, and business and risk assessments, may invalidate the BJR protection afforded to SOE directors. Ultimately, this study seeks to formulate legal parameters for distinguishing legitimate business risks, managerial errors, and conduct that may give rise to criminal liability.

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[8] Kevin Sean Gilbert et al., "Perlindungan Hukum Bagi Direksi BUMN Melalui Business Judgment Rule Dalam Perkara Tindak Pidana Korupsi Untuk Mewujudkan Kepastian Hukum," *Integrative Perspectives of Social and Science Journal* 3, no. 8 (2026): 731–45; Faiha Oktrina, "Kedudukan Dan Tanggung Jawab Direksi Dalam Pengambilan Keputusan Bisnis Berdasarkan Business Judgment Rule," *Ulil Albab: Jurnal Ilmiah Multidisiplin* 5, no. 9 (2026): 4534–42, https://doi.org/10.56799/jim.v5i9.18281; Munazar Umar, "Business Judgment Rule Dalam UU Bumn 2025: Antara Perlindungan Direksi Dan Celah Impunitas," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4, no. 2 (2026): 5685–93, https://doi.org/10.61104/alz.v4i2.4820.

[9] Gilbert et al., "Perlindungan Hukum Bagi Direksi BUMN Melalui Business Judgment Rule Dalam Perkara Tindak Pidana Korupsi Untuk Mewujudkan Kepastian Hukum."

2. RESEARCH METHODOLOGY

This study employs normative legal research to examine the application of the Business Judgment Rule (BJR) in determining the legal liability of directors of Indonesian State-Owned Enterprises (SOEs), particularly concerning corporate governance violations and alleged corruption offenses. The research uses four complementary approaches: the statutory, conceptual, case, and comparative approaches. The statutory approach examines the relevant provisions of Law Number 40 of 2007 on Limited Liability Companies, Law Number 31 of 1999 as amended by Law Number 20 of 2001 on the Eradication of Corruption, and Laws Number 1 of 2025 and Number 16 of 2025 on SOEs. The conceptual approach analyzes fiduciary duties, BJR, good corporate governance, corporate losses, and criminal liability. The case approach focuses on Supreme Court Decision Number 121 K/Pid.Sus/2020 concerning the BMG acquisition and Jakarta High Court Decision Number 41/Pid.Sus-TPK/2024/PT DKI concerning Pertamina's LNG procurement. The comparative approach identifies similarities and differences in judicial reasoning, particularly regarding RKAP compliance, Board of Commissioners' recommendations, GMS approval, and risk assessment. Primary and secondary legal materials are analyzed qualitatively through systematic, grammatical, and teleological legal interpretation to formulate parameters distinguishing legitimate business risks, managerial negligence, and criminal liability.

3. RESEARCH RESULT AND DISCUSSION

3.1. The Status and Application of the Business Judgment Rule in Judicial Reasoning: The Pertamina LNG Procurement and BMG Block Acquisition Cases

The two judicial decisions reveal divergent approaches to judicial assessment: the BMG Block case emphasizes the protection of the substantive merits of business decisions, whereas the Pertamina LNG procurement case places greater emphasis on procedural compliance and corporate governance standards. In the Pertamina LNG procurement case, the legal controversy originated from an "approval in principle" issued by the President Director of PT Pertamina (Persero) on September 19, 2011. This approval subsequently served as the basis for entering into a liquefied natural gas (LNG) sales and purchase agreement with Corpus Christi Liquefaction LLC. According to the facts established in the judicial proceedings, the decision was made without adequate justification, comprehensive technical and economic analysis, or a thorough assessment of the associated investment risks.

Furthermore, the decision was not preceded by a written response from the Board of Commissioners or approval from the General Meeting of Shareholders (GMS), as required under the company's Articles of Association. The matter subsequently

developed into a legal controversy when LNG cargoes that could not be absorbed by the domestic market were resold in the international market at lower prices. Based on an audit conducted by the Supreme Audit Agency (Badan Pemeriksa Keuangan or BPK), the transaction resulted in state financial losses amounting to USD 113,839,186.60.

On June 24, 2024, the Corruption Court at the Central Jakarta District Court, through Judgment No. 12/Pid.Sus-TPK/2024/PN Jkt.Pst., sentenced the defendant to nine years of imprisonment. The judgment was subsequently affirmed by the Jakarta High Court through Judgment No. 41/Pid.Sus-TPK/2024/PT DKI, dated August 28, 2024. At the cassation stage, the Supreme Court, through Decision No. 1076 K/Pid.Sus/2025, dated February 28, 2025, rejected the cassation appeal and increased the prison sentence to 13 years. This sequence of judicial decisions indicates that the determination of criminal liability in the LNG procurement case was not based exclusively on the existence of state financial losses. Rather, it also involved an assessment of the decision-making process and the directors' compliance with applicable corporate governance standards.

The judicial construction of the element of unlawfulness in the LNG procurement case was closely associated with violations of Good Corporate Governance (GCG) principles. The panel of judges referred to various legal and corporate instruments governing professionalism, efficiency, transparency, independence, accountability, responsibility, and fairness in corporate management. These instruments included Law No. 19 of 2003 concerning State-Owned Enterprises, Pertamina's procurement guidelines, the company's long-term plan, Articles 92 and 97 of the Law on Limited Liability Companies, the company's Articles of Association, and internal regulations governing investment risk management systems. Although the Business Judgment Rule (BJR) was not explicitly adopted as the principal analytical framework in the judicial reasoning, its underlying principles remain relevant to assessing the conduct of the Board of Directors.

In its legal reasoning, the panel of judges placed greater emphasis on compliance with corporate governance requirements than on a comprehensive assessment under the BJR when determining whether the conduct constituted an unlawful act. Consequently, the focus of judicial scrutiny shifted from evaluating the substantive reasonableness of the business decision to examining procedural compliance and the legitimacy of the authority exercised in the decision-making process. This approach is understandable because the Board of Directors does not possess unlimited discretion in managing a company. Its managerial authority, as provided under Article 92 of the Law on Limited Liability Companies, remains subject to the company's Articles of Association, applicable laws and regulations, and the distribution of powers among the company's corporate organs. Accordingly, disregarding mandatory approval

requirements or established oversight mechanisms may raise substantive concerns regarding the proper exercise of the Board of Directors' managerial authority.

This judicial approach must be assessed in light of the principles underlying the Business Judgment Rule. Under Article 97(5) of the Law on Limited Liability Companies, members of the Board of Directors are not personally liable for corporate losses if they can demonstrate that: (1) the losses did not result from their own fault or negligence; (2) they managed the company in good faith and with due care in the company's interests and in accordance with its purposes and objectives; (3) they had no direct or indirect conflict of interest in the management actions that resulted in the losses; and (4) they took appropriate measures to prevent the losses or their continuation. This provision demonstrates that BJR protection is not determined solely by whether the Board of Directors formally possessed the authority to make a particular business decision. Rather, such protection also depends on the quality, integrity, and diligence of the decision-making process. Therefore, violations of corporate governance procedures must be assessed according to their nature, materiality, and relevance to the statutory requirements for BJR protection.[10] Not every administrative irregularity or procedural deficiency can automatically be characterized as an unlawful act or treated as sufficient to establish the elements of a criminal offense, including corruption.[11]

In contrast, Supreme Court Decision No. 121 K/Pid.Sus/2020, concerning the acquisition of a participating interest in Australia's BMG Block, involved an acquisition undertaken by the Board of Directors of Pertamina Hulu Energi to increase the company's oil and gas reserves. The investment proposal was submitted to the Board of Commissioners and subsequently approved through a memorandum in accordance with the company's internal corporate procedures. Although the transaction subsequently experienced a decline in value, resulting in financial losses for the company, the Supreme Court determined that the directors' actions constituted a business decision falling within the scope of Business Judgment Rule (BJR) protection.

The Court reasoned that the decision was intended to advance the company's business interests and could not automatically be characterized as a criminal offense merely because it produced unfavorable economic consequences. Accordingly, the application of the BJR in the BMG case centered on an assessment of the objectives, decision-making process, and risk profile underlying the investment decision.

A comparative examination of these two cases demonstrates that the divergence in their judicial outcomes cannot be explained solely by the existence of corporate losses

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[10] Måns Dunfjäll, "Materiality in Transition: Challenges and Opportunities in Corporate Sustainability Reporting under the CSRD," *European Journal of Risk Regulation* 16, no. 3 (2025): 927–41, https://doi.org/10.1017/err.2025.10016.

[11] Rizal Syamsul and R. Richard, "Reconstruction of the Limits of Criminalization of Unlawful Elements and Abuse of Authority to Achieve Legal Certainty in Enforcing Criminal Acts of Corruption," *Journal Customary Law* 3, no. 3 (2026): 1–14, https://doi.org/10.47134/jcl.v3i3.1.5795.

or the presence or absence of approval from corporate organs. In the BMG case, approval from the Board of Commissioners indicated that the investment decision had been undertaken through established corporate procedures. By contrast, in the LNG procurement case, the absence of a written response from the Board of Commissioners and the lack of approval from the General Meeting of Shareholders (GMS), combined with inadequate technical, economic, and risk assessments, were considered components of a broader pattern of corporate governance irregularities. The fundamental distinction between the two cases therefore lies in the interaction among managerial authority, procedural compliance, the adequacy of decision-relevant information, and the substantive business considerations underlying the decisions made by the Board of Directors. Approval by corporate organs does not, in itself, conclusively establish that a business decision satisfies the requirements for BJR protection. Conversely, the absence of a formal approval document is not, by itself, sufficient to establish criminal liability without an independent examination of the constituent elements of the alleged offense.[12]

These findings are consistent with Hartono et al., who identified the tension between corporate law and state financial law in determining the liability of directors of state-owned enterprises (SOEs).[13] They also reinforce the analysis by Tetuko and Adam concerning the application of BJR protection in the BMG Block acquisition, particularly the importance of assessing business decisions in light of the decision-making process and the company's interests.[14] Furthermore, the findings support Wijayanto and Andini, who emphasize that BJR protection may be unavailable when business decisions are characterized by a lack of good faith, failure to exercise due care, and inadequate decision-making procedures.[15] Governance violations must be assessed further in terms of their materiality and relevance to the statutory requirements for BJR protection rather than being treated merely as instances of formal noncompliance.

The BJR constitutes an essential legal principle for limiting the liability of SOE directors. Its application remains inseparable from the fulfillment of fiduciary duties and compliance with corporate governance standards. The BMG Block case demonstrates that losses arising from investment risks do not automatically extinguish BJR protection. Conversely, the Pertamina LNG procurement case illustrates that substantial deficiencies in the decision-making process may provide grounds for denying such protection.

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12 Wahyu Sudrajat et al., *Unlawfulness of Crime in The Standpoint of The Rechtsgut Theory*, 41, no. 3 (2026): 391–418, https://doi.org/10.20473/ydk.v41i3.67797.

13 Hartono et al., "Kerugian Keuangan Negara Pada Badan Usaha Milik Negara (BUMN) Dalam Perspektif Doktrin Business Judgement Rule."

14 Tetuko and Adam, "Penerapan Doktrin Business Judgment Rule Terhadap Direksi Anak Perusahaan BUMN: Studi Kasus Putusan Mahkamah Agung Nomor 121 K/Pid.Sus/2020."

15 Wijayanto and Andini, "Menguji Batas Business Judgement Rule."

Importantly, the denial of BJR protection does not, in itself, establish the commission of a criminal offense of corruption. Criminal liability must still be determined through independent proof of all the constituent elements of the alleged offense, including unlawfulness, abuse of authority where applicable, the requisite intent or culpability, and a demonstrable causal relationship between the defendant's conduct and the resulting harm. Accordingly, the central finding of this study is that the assessment of BJR protection requires an integrated approach that considers both the substantive merits of business decisions and the procedural integrity of corporate governance. Such an approach enables a more proportionate distinction among legitimate business risks, managerial errors, and conduct that may warrant the imposition of criminal liability.

3.2. Governance Violations as Grounds for Denying Business Judgment Rule Protection and Determining the Liability of State-Owned Enterprise Directors

Violations of corporate governance procedures may undermine the protection afforded by the Business Judgment Rule (BJR) when they materially compromise the exercise of managerial authority, undermine the foundation for informed decision-making, and are accompanied by a failure to implement appropriate risk-mitigation or corrective measures. Accordingly, the assessment of BJR protection should focus primarily on the quality and integrity of the decision-making process rather than exclusively on the economic outcomes of the business decision.

Article 97(5) of Law No. 40 of 2007 concerning Limited Liability Companies establishes four cumulative requirements that directors must satisfy to avoid personal liability for losses incurred by the company. First, the losses must not have resulted from the fault or negligence of the Board of Directors. Second, the directors must have managed the company in good faith and with due care, in the company's interests and in accordance with its purposes and objectives. Third, the directors must not have had any direct or indirect conflict of interest in the management actions that resulted in the losses. Fourth, the directors must have taken appropriate measures to prevent the occurrence or continuation of such losses. Taken together, these four requirements demonstrate that BJR protection is conditional rather than absolute. Directors must therefore demonstrate integrity, due care, and accountability in exercising their managerial authority.

The first and second requirements raise fundamental legal concerns in the Pertamina LNG procurement case. The in-principle approval issued on September 19, 2011, was not supported by adequate technical and economic analyses or a comprehensive assessment of the associated investment risks. Furthermore, the decision was neither accompanied by a written response from the Board of

Commissioners nor supported by approval from the General Meeting of Shareholders (GMS), as required under the company's Articles of Association. These circumstances suggest that the decision-making process was not adequately informed or supported by a sufficient evidentiary and analytical foundation. From the perspective of the duty of care, directors are expected to ensure that strategic investment decisions are based on rational, measurable, and accountable assessments. Consequently, the absence of comprehensive risk analyses and feasibility studies should not be regarded merely as an administrative deficiency; it may also indicate a failure to satisfy the standard of care required in corporate management.

With respect to the first requirement, it is essential to emphasize that the occurrence of corporate losses does not automatically establish fault or negligence on the part of the Board of Directors. Nevertheless, when losses arise from decisions made without adequate technical and economic analyses or appropriate risk assessments, the circumstances provide grounds for examining whether the losses resulted from negligence in the decision-making process. The central issue, therefore, is not simply whether the LNG transaction failed to generate a profit, but whether the directors fulfilled their professional and fiduciary obligations before making the investment decision. This interpretation positions the BJR as a mechanism for evaluating the integrity and diligence of corporate decision-making rather than as a guarantee that every managerial decision will produce a profitable outcome.

Regarding the second requirement, the absence of adequate business justification and sufficient supporting information raises concerns about whether the directors fulfilled their duties of good faith and due care. Good faith cannot be established merely by asserting that a particular decision was intended to serve the company's interests. Rather, it must be demonstrated through concrete and verifiable actions, including conducting investment feasibility studies, evaluating market demand, assessing the domestic market's capacity to absorb LNG supplies, and identifying and evaluating potential investment risks. Furthermore, obtaining the required approvals from the relevant corporate organs under the company's Articles of Association constitutes an important internal control mechanism for ensuring that the Board of Directors exercises its authority within the prescribed corporate governance framework. Disregarding substantive approval requirements may therefore indicate that the decision was not made through the appropriate corporate governance mechanisms.

The third and fourth statutory requirements also warrant separate examination. With respect to the absence of conflicts of interest, the judicial assessment should determine whether the directors had any personal interests, affiliations, financial benefits, or other competing interests that could compromise their independence and objectivity in making corporate decisions. The absence of approval from the Board of Commissioners or the General Meeting of Shareholders (GMS), however, does not, by

itself, establish the existence of a conflict of interest. The fourth requirement concerns the measures taken by the Board of Directors to prevent or mitigate corporate losses. Such measures may include reassessing transactions, renegotiating contractual arrangements, adjusting marketing strategies, and implementing corrective actions once potential risks have been identified. If directors are aware of potential losses but fail to take reasonable measures to mitigate them, such inaction may further indicate a failure to discharge their fiduciary duties properly.

Violations of corporate governance procedures should not be treated uniformly as grounds for denying Business Judgment Rule (BJR) protection. Rather, their legal consequences must be determined through a contextual assessment of their nature and materiality. To establish a more consistent framework for this assessment, this study proposes three cumulative legal parameters. The first concerns corporate authority and approval. A governance violation must involve the failure to obtain approval expressly required by applicable legislation or the company's Articles of Association. The allocation of managerial authority and the requirement for approval by the relevant corporate organs constitute integral components of the mechanism through which a company's decisions are formally authorized.[16] The absence of a mandatory and substantively relevant approval may indicate that the Board of Directors exercised its authority outside the established corporate governance framework.

The second parameter concerns the adequacy of information and the exercise of due care. A procedural violation becomes legally significant when it results in a business decision being made without an adequate informational foundation. Relevant deficiencies may include the absence of technical assessments, economic feasibility studies, market demand evaluations, or comprehensive risk analyses. This parameter is directly connected to the duty of care, which requires directors to understand and reasonably assess the potential consequences of their decisions before committing the company to strategic transactions.[17] The absence of a particular analytical document should not be evaluated mechanically. Instead, the assessment must determine whether the directors, in substantive terms, possessed sufficient relevant information to make an informed and reasonably diligent business decision.

The third parameter concerns risk mitigation and corrective action. Directors must demonstrate that, once potential irregularities or financial losses have been identified, they have taken reasonable measures to prevent, minimize, or mitigate their consequences. A failure to implement corrective measures, particularly when the risks are known and remain manageable, may indicate that the directors have fallen short of the required standards of care and responsibility. These three parameters must be

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16 Abigail Prasetyo et al., "Single Shareholder Company Governance: A Legal Concept from Job Creation Law," *Refleksi Hukum: Jurnal Ilmu Hukum* 9, no. 2 (2025): 157–74, https://doi.org/10.24246/jrh.2025.v9.i2.p157-174.

17 Tareq Na'el Al-Tawil, "The Major Issues That Need to Be Addressed by Effective Corporate Governance in the 21st Century," *Journal of Financial Crime* 23, no. 2 (2016): 349–78, https://doi.org/10.1108/JFC-01-2015-0003.

assessed cumulatively to determine whether a procedural violation is sufficiently material to undermine or preclude BJR protection. Conversely, administrative deficiencies that do not materially affect the exercise of corporate authority, the adequacy of decision-relevant information, or the capacity to mitigate potential losses should not automatically result in the denial of such protection.

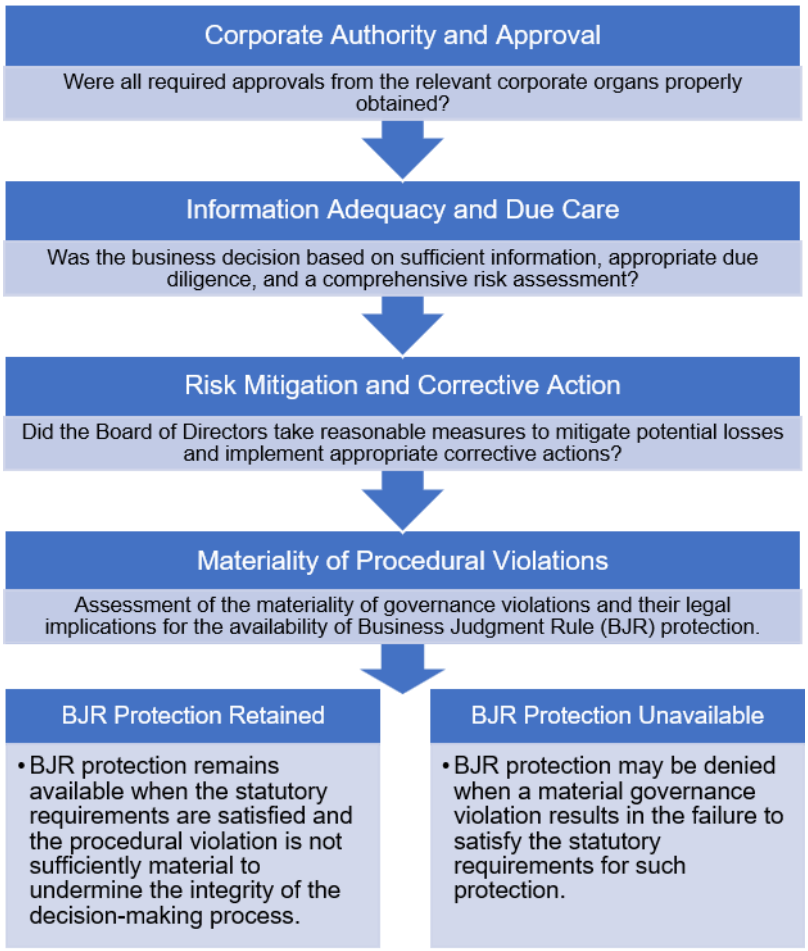


Figure 1. Proposed Normative Framework for Assessing the Materiality of Corporate Governance Violations and the Availability of BJR Protection

Applying these parameters to the Pertamina LNG procurement case reveals that the absence of a written response from the Board of Commissioners and approval from the General Meeting of Shareholders (GMS), provided that both were mandatory under the company's Articles of Association, raises concerns regarding the authority and approval requirements governing the company's corporate organs. Furthermore, the absence of adequate technical and economic analyses and comprehensive risk assessments raises fundamental questions about the sufficiency of the information available to the directors and their fulfillment of the duty of care.[18] The third parameter,

[18] Terje Aven, "Risk Assessment and Risk Management: Review of Recent Advances on Their Foundation," *European Journal of Operational Research* 253, no. 1 (2016): 1–13, https://doi.org/10.1016/j.ejor.2015.12.023.

however, must be assessed in light of the factual circumstances surrounding any mitigation measures implemented after the risks associated with the transaction became known. Although the first two parameters provide substantial grounds for identifying potential violations of corporate governance requirements, the third requires a closer examination of the corrective actions actually undertaken by the Board of Directors. This approach ensures that any conclusion concerning the denial of Business Judgment Rule (BJR) protection remains within the boundaries of the facts and judicial findings established in the case.

These findings are consistent with Hartono et al., who demonstrate that the dualism between corporate law and state financial law creates legal uncertainty concerning the liability of directors of state-owned enterprises (SOEs).[19] Similarly, Pane et al. argue that business losses should not automatically be characterized as acts of corruption.[20] Gilbert et al., meanwhile, propose the BJR as a preliminary screening mechanism for distinguishing legitimate business risks and commercial failures from managerial errors and criminal offenses.[21] Building on these contributions, the present study develops three specific legal parameters—corporate authority and approval, the adequacy of decision-relevant information, and risk mitigation and corrective action—as a cumulative framework for assessing the materiality of corporate governance violations and their implications for BJR protection.

The denial of BJR protection is not equivalent to the establishment of criminal liability. The BJR and criminal liability constitute distinct legal concepts, each serving different functions and subject to different legal requirements. When directors fail to satisfy the conditions prescribed under Article 97(5) of the Law on Limited Liability Companies, they may become personally liable for losses incurred by the company. The imposition of criminal sanctions under Article 2 or Article 3 of the Law on the Eradication of Corruption Crimes requires law enforcement authorities to independently establish all the constituent elements of the offense in accordance with the applicable statutory provisions. Depending on the charged provision, these elements include an unlawful act or abuse of authority, state financial losses, and the requisite element of culpability. Accordingly, a failure to satisfy the requirements for BJR protection cannot substitute for the prosecution's obligation to prove the constituent elements of a criminal offense.

Violations of corporate governance procedures may undermine or preclude BJR protection when they are sufficiently material and substantively demonstrate that the Board of Directors has failed to discharge its fiduciary duties. The principal contribution

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[19] Hartono et al., "Kerugian Keuangan Negara Pada Badan Usaha Milik Negara (BUMN) Dalam Perspektif Doktrin Business Judgement Rule."

[20] Pane et al., "Penerapan Business Judgment Rule Dalam Pertanggungjawaban Direksi BUMN Atas Risiko Bisnis Dan Kerugian Keuangan Negara."

[21] Gilbert et al., "Perlindungan Hukum Bagi Direksi BUMN Melalui Business Judgment Rule Dalam Perkara Tindak Pidana Korupsi Untuk Mewujudkan Kepastian Hukum."

of this study is the development of a cumulative three-parameter test integrating corporate authority and approval, the adequacy of decision-relevant information, and risk mitigation and corrective action. These parameters provide an analytical foundation for distinguishing administrative irregularities, managerial errors, and potentially unlawful conduct, thereby clarifying their respective implications for legal liability. Accordingly, the application of the BJR should follow a two-stage analytical framework. First, the assessment must determine whether the Board of Directors has satisfied the statutory requirements for BJR protection. Second, if such protection is unavailable, the existence of civil or criminal liability must be determined independently by examining the applicable legal requirements and establishing the constituent elements of the relevant cause of action or criminal offense. This approach is essential to maintaining an appropriate balance between protecting legitimate professional business decisions and ensuring the accountability of directors in managing the assets and corporate interests of state-owned enterprises.

4. CONCLUSION

The BMG Block acquisition case places greater emphasis on protecting business decisions made in the company's interests, whereas the Pertamina LNG procurement case highlights violations of corporate governance procedures in assessing the unlawfulness of directors' conduct. Violations involving the Corporate Work Plan and Budget (Rencana Kerja dan Anggaran Perusahaan or RKAP), the absence of a response from the Board of Commissioners, the lack of approval from the General Meeting of Shareholders (GMS), and the failure to conduct adequate risk assessments do not automatically invalidate Business Judgment Rule (BJR) protection. Rather, such violations must be evaluated in terms of their nature and materiality. This study proposes three cumulative parameters for assessing their implications: (1) the authority and approval of the relevant corporate organs; (2) the adequacy of decision-relevant information and the exercise of due care; and (3) the implementation of appropriate risk-mitigation and corrective measures. The principal contribution of this research is the development of an analytical framework that integrates corporate law, SOE governance, and anti-corruption criminal law.

This study offers both theoretical and practical contributions. Theoretically, it advances corporate law scholarship by developing legal parameters for assessing the materiality of corporate governance violations in determining the availability of BJR protection. Practically, its findings provide guidance for SOE boards of directors in making strategic business decisions, boards of commissioners and GMS members in exercising their supervisory and approval functions, and judges and law enforcement authorities in distinguishing legitimate business risks from conduct that may constitute criminal offenses. Nevertheless, this study is limited by its reliance on a normative legal research approach and its examination of only two judicial decisions. Consequently, it

does not fully capture the diversity of decision-making practices and corporate governance arrangements across SOEs. Accordingly, further regulatory guidance on the application of the BJR is needed, particularly regarding corporate approval requirements, the adequacy of investment analyses, decision-making documentation, and risk-mitigation mechanisms. Such guidance should preserve a clear distinction between the assessment of BJR protection and the evidentiary requirements for establishing criminal liability. Future research should adopt comparative and socio-legal approaches that incorporate empirical evidence of actual SOE governance practices and examine developments in judicial interpretation following the enactment of Law No. 16 of 2025.

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